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Nos. 83-812
83-929

In the Supreme Court of the United States

OCTOBER TERM, 1983

GEORGE C. WALLACE, *et al.*,
Appellants,

DOUGLAS T. SMITH, *et al.*,
Intervenors-Appellants,

v.

ISHMAEL JAFFREE, *et al.*,
Appellee

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICUS CURIAE, STATE OF CONNECTICUT

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BRIEF OF AMICUS CURIAE, STATE OF CONNECTICUT

INTEREST OF AMICUS

In 1975, the Connecticut legislature enacted Conn. Gen. Stat. §10-16a (Rev. 1983) which now reads:

> Each local or regional board of education shall provide opportunity at the start of each school day to allow those students and teachers who wish to do so, the opportunity to observe such time in silent meditation.

The legislative history makes clear that in using the phrase "silent meditation" the legislature was "talking about a period of contemplation intended to express the author's, that is the person's own reflection on a matter that might be of inspiration, and that this inspiration need not be of a religious nature." (Senator DeNardis, 18 Conn. S. Proc. Pt. 5, 1975 Sess. p. 2450).

The purpose of the legislation was stated as "giving the opportunity in the schools to let them start the day with some sort of a meditation . . . something that would give the young people a chance to start their day off in some other way than they've been doing . . . that each one can sit there at his or her desk and think about their day, perhaps . . . maybe just to get their thoughts together . . . perhaps just do something." (Rep. Motto, 18 Conn. H. Proc. Pt. 8, 1975 Sess. p. 3745).

The Connecticut Statute does not require that the time period of silent meditation be teacher-led, or mandate that all students and teachers participate in meditation. The debate in the legislature thus indicates that this measure was the product of compromise, designed to go no further than permitted by applicable precedents of this Court. (Senator Owens, 18 Conn. S. Proc. Pt. 4, 1975 Sess. p. 1590).

This Court now has before it an Alabama statute calling for a period of silence for "meditation or voluntary prayer." Alabama Code §16-1-20.1. (Cum. Supp. 1982). Your Amicus writes to emphasize that there is no constitutional infirmity with a statute calling for a period of meditation alone. Even the Appellees, Jaffree, et al., so admit in the Motion to Affirm. *Motion to Affirm*, at 2, 3. The issue of school prayer is a divisive one, as became apparent when this issue arose in the Connecticut General Assembly. During the legislative process Connecticut enacted a compromise position which was able to encompass many valid points of view. The Connecticut resolution is suggested to this Court as one which will do no harm to any religious tradition or belief.

We respectfully ask this Court to find constitutional such statutes as Conn. Gen. Stat. §10-16a which recognize the valid role of voluntary meditation in the public school setting.[1]

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[1]The following states have statutes which mention "meditation or silent prayer": Alabama Code §16-1-20.1 (period of silence for meditation or voluntary prayer); Arkansas Stat. Ann. §80-

1607.1 (silent prayer or meditation on religious theme or moment of silent reflection on the anticipated activities of the day); Delaware Code Ann. 14 §4101 (2 or 3 minutes to participate in moral, philosophical, patriotic or religious activity, including voluntary prayer); Florida Stats. Ann. §233.062 (2 minutes for silent prayer or meditation); Georgia Code §20-2-1050 (silent prayer or meditation, as in Ark., *supra*); Illinois Rev. Stat. Ch. 122 ¶771 (silent prayer or meditation, as in Ark., *supra*); Indiana Code §20-10.1-7-11 (silent prayer or meditation, as in Ark., *supra*); Kansas Stat. Ann. §72.5308a (silent prayer or meditation as in Ark., *supra*); Louisiana Rev. Stat. Ann §17:2115 (meditation or prayer, not to be a religious exercise); Massachusetts Gen. Laws Ann. 71 §1A (a period of silence for meditation or prayer); Nevada Rev. Stat. §388.075 (period of silence for voluntary individual meditation, prayer or reflection); New Mexico Stat. Ann. §22-5-4.1 (period of silence for contemplation, meditation or prayer) (declared unconstitutional in *Duffy v. Las Cruces Public Schools*, 557 F.Supp. 1013 (D.N.Mex (1938)); North Dakota Cent. Code §15-47-30.1 (silent prayer or meditation, as in Ark., *supra*); Penn. Stat. Ann. tit. 24 §15. 1516.1 (silent prayer or meditation as in Ark., *supra*); Tennessee Code Ann. §49-1922 (one minute for meditation, prayer or personal beliefs) declared unconstitutional in *Beck v. McElrath*, 548 F.Supp. 1161 (D.Tenn.. 1982)); Virginia Code §22.1-203 (one minute for meditation or prayer).

The following states have meditation statutes only: Alabama Code §16-1-20 period of silence for meditation); Arizona Rev. Stat. Ann. §15-522 (supp. 1982) (period of silence for meditation); Connecticut Gen. Stat. §10-16a (opportunity for silent meditation); Maine Rev. Stat. Ann. tit. 20-A §4805 (period of silence for reflection or meditation); Maryland Ed. Code Ann. §7-104 (silent meditation for 1 minute at opening exercises); Michigan Stat. Ann. §15-41565 (opportunity for silent meditation); Ohio Rev. Code Ann. §3313.601 (period of time for meditation on moral, philosophical or patriotic theme); New Jersey Rev. Stat. §18A:36-4 (one minute of silence for quiet, contemplation, introspection) (declared unconstitutional, *May v. Cooperman*, 572 F.Supp. 1561 (D.N.J. 1983)); New York Ed. Law §3039-a (meditation on religious theme or activities of the day). Rhode Island Gen. L. §16-12-3.1 (one minute period of silence for meditation).

SUMMARY OF ARGUMENT

The Establishment Clause mandates that a state statute have a secular purpose and a primary effect that neither advances nor inhibits religion. A "meditation" statute, such as Connecticut's, has the valid secular purposes of calming "the tumult of the playground," teaching self-discipline, allowing for inspirational thought of any nature (religious or otherwise), and promoting respect for classroom teachers. The Connecticut Statute does not require all students and teachers to participate, it permits them to observe silent meditation voluntarily and does not require teacher-led meditation. It is a neutral enactment, having an important place in the school curriculum.

ARGUMENT

MEDITATION STATUTES ARE NOT A VIOLATION OF THE ESTABLISHMENT CLAUSE AND PROPERLY ACCOMMODATE ALL RELIGIOUS BELIEFS.

In voiding school-sponsored verbal prayer, *Engle v. Vitale*, 370 U.S. 421 (1962), Bible readings, *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963) and more recently the posting of the Ten Commandments in school rooms, *Stone v. Graham*, 449 U.S. 39 (1981), this Court has declared that "to withstand the strictures of the Establishment Clause [the State Statute] must [have] a secular legislative purpose and a primary effect that neither advances nor inhibits religion." *Schempp, supra*, at 222.[2]

A. *The Statute Serves a Secular Purpose*

Applying the above-stated test to Connecticut's "opportunity to meditate" statute, there is no question that §10-16a has a secular legislative purpose. The debate on its enactment shows that the legislature wanted to give each student a chance to review in his mind the planned activities of the day and to afford him the opportunity to engage in inspirational thought of any nature, religious or otherwise. Taking place at the time of "opening exercises", the silent meditation would clearly correspond to Justice Brennan's conception in *Schempp*:

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[2]The "excessive governmental entanglement" test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971) is less applicable to school prayer than it is to funding of private institutions. *See* Drakeman, "Prayer in the Schools: Is New Jersey's Moment of Silence Law Constitutional," 35 Rut. L. Rev. 341 Note 100 (1983). In any event the fact that Connecticut's statute provides for voluntary meditation and is not teacher-led makes this factor one of minimal importance.

> I have previously suggested that Torasco and the Sunday Law Cases forbid the use of religious means to achieve secular ends where non-religious means will suffice. That principle is readily applied to these cases. It has not been shown that readings from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the Pledge of Allegiance, or *even the observance of a moment of reverent silence at the opening of class*, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any member of the community or the proper degree of separation between the spheres of religion and government. *Schempp, supra* at 280, 281. (emphasis added).[3]

Justice Brennan's words have served as justification to sustain silent meditation statutes in New Hampshire (*Opinion of the Justices*, 113 N.H. 297, 307 A.2d 558 (1973)) and

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[3]In a footnote Justice Brennan continued:

> Thomas Jefferson's insistence that where the judgments of young children "are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history." 2 Writings of Thomas Jefferson (Memorial ed. 1903), 204, is relevant here. Recent proposals have explored the possibility of commencing the school day "with a quiet moment that would still the tumult of the playground and start a day of study," Editorial, Washington Post, June 28, 1962 §A, p. 22, col 2. See also, New York Times, August 30, 1962 §1, p. 18, col. 2.

Schempp, supra, at 281 (note 57).

Alabama (*Jaffree v. James*, 544 F.Supp. 727 (S.D. Ala. 1982) (§16-1-20 constitutional). In Massachusetts a three-Judge District Court has found that the "legislature could reasonably believe that students tend to learn greater self-discipline and respect for the authority of the teacher from a required moment of silence." *Gaines v. Anderson*, 421 F.Supp. 337, 342 (D. Mass. 1976) (holding the Massachusetts Statute constitutional).[4] *See also* L. Tribe, *American Constitutional Law* at 829: "Similarly, since a moment of silence is arguably non-religious, even a statute *requiring* observance of a brief period of silence or meditation at the opening of the school day would not violate the establishment clause." (emphasis added) The Connecticut Statute does not *require* individuals to so observe.

B. *The Statute Neither Advances Nor Inhibits Religion*

Given this secular purpose, it cannot be said that Connecticut's statute advances or inhibits religion. The silent meditation law recognized the "wholesome 'neutrality' " with

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[4]*Gaines* also finds the striking of the word "prayer" from the proposed statute and the substitution of "meditation" indicates a good faith effort by the state legislature to comply with the Court's holdings. *Id.* at 342. That is what happened in the Connecticut legislative process:

> Mr. President, speaking on behalf of the committee on conference, we attempted, during our deliberations to satisfy all the points of view and to retain in theory the original intent of Senator Fauliso [to provide for silent prayer]. We believe we have reached accord. We have accommodated all of those people who had some reservations about the propriety and indeed the constitutionality, and we have before you in LCO7755 the fruits of our labor . . . .

Senator Hannon, 18 Conn. S. Proc. Pt. 5, 1975 Sess. p. 2446.

which government must treat religion." *Schempp, supra* at 222. The act of meditation is not so associated with one religion as to advance only religious beliefs. *See also, Gaines, supra* at 342. As this Court declared in *Lynch v. Donnelly*, 52 U.S.L.W. 4317, 4321 (March 6, 1984): "Here, whatever benefit [there is] to one faith or religion or to all religions, is indirect, remote and incidental . . . ." *See also*, Choper, "Religion in the Public Schools: A Proposed Constitutional Standard" 47 Minn. L.Rev. 329, 371 (1963):

> Since each student could utilize this moment of silence for any purpose he saw fit, the activity may not be fairly characterized as solely religious, and since no student would really know the subject of his classmates' reflections, no one could in any way be compelled to alter his thoughts.

Recent state and federal cases invalidating state statutes have focused on the use of the word "prayer" in the legislation and have found a legislative intent to ignore this Court's precedents. *Opinion of the Justices*, 387 Mass. 1201, 44 N.E.2d 1159 (1982), rejected proposed legislation which called for "a period of voluntary *prayer* or meditation." In invalidating a Tennessee statute, the court in *Beck v. McElrath*, 548 F.Supp. 1161, 1163 (M.D. Tenn. 1982) declared:

> Defendants suggest that the statute merely provides for enforcement of *a moment of silence* in public schools. This approach begs the preeminent question, however. Plaintiffs do not challenge simply a moment of silence here; they challenge a moment of silence which, by legislative mandate in Tennessee, "shall be observed for meditation or prayer or personal beliefs."

> It may well be, as defendants contend, that a moment of silence in and of itself is nondiscriminatory and may serve a secular purpose in aid of the educative function. Certainly a statutory enactment is unnecessary to provide for a moment of silence. The court is unable to agree, however, that the statute reflects such a clearly secular purpose . . . . There were indications that certain legislators have concluded that prayer should be a routine part of a school day because a majority of their constituents support such a practice. (Emphasis added).

And in *Duffy v. Las Cruces Public Schools*, 557 F.Supp. 1013, 1015 (D.N.Mex. 1983), the statute was rejected ("period [of silence] for contemplation, meditation or prayer") because "the word 'prayer' is a clear indication of legislative purpose . . . disguis[ing] the religious nature of the bill."[5] The word "prayer" is specifically not employed in the Connecticut Statute.

The sole case to consider a "meditation only" statute is *May v. Cooperman*, 572 F.Supp. 1561 (D.N.J. 1983), *appeal docketed*, No. 83-5890 (3rd Cir. Dec 16, 1983). This statute, *see* note 1, *supra*, provides for a minute of silence for "quiet and private contemplation or introspection." The Court found that, irrespective of the language of the statute, the New Jersey legislature unambiguously intended "to mandate a

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[5]The Court below in the instant case invalidates Ala. Code §16-1-20.1 stating: "[W]e do not imply that simple meditation or silence is barred in the public schools; we hold that the State cannot participate in the advancement of religious activity through any guise, including teacher-led meditation." *Jaffree v. Wallace*, 705 F.2d 1526, 1536 (11th Cir. 1983).

period at the start of each school day when all students would have an opportunity to engage in prayer." *Id.*, at 1571. The law was only one of a series of eighteen such bills passed by the legislature to circumvent the *Engle* and *Schempp* holdings. *Id.*, at 1572. Connecticut's statute, calling for silent meditation did not arise from a legislative context of repeated attempts to authorize school prayer. Its intent is to authorize a time of voluntary, private meditation for those students and teachers who choose to use it.

CONCLUSION

In this case the Court should recognize that there is no constitutional infirmity in state statutes that provide for silent meditation.

Respectfully submitted,

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